IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7854 OF 2004

Shri Bhagwan Dinkar Kshirsagar ... Petitioner

V/s

Shri Dattatray Sadhu Keskar ... Respondent

Mr. A.V. Anturkar for the petitioner.

Mr. S.S. Kulkarni for the respondent No.1.

CORAM: P.V. KAKADE, J.

DATED: 10TH APRIL, 2006

P.C.:

1. Heard learned counsel for both parties. Perused the record.

2. The petitioner has preferred this petition against the judgment and order dated 27.8.2004 passed by the Addl. District Judge, Pune, allowing the appeal and setting aside the judgment and order passed by the Trial Court who had dismissed the suit for possession of the suit premises.

3. The respondent plaintiff is landlord of the suit

premises and petitioner was his tenant since June, 1984 paying rent of Rs.40/- plus permitted increases and electrical charges. The petitioner defendant allegedly stopped payment of rent and inspite of demand made thereof, the defendant did not pay the rent and electrical charges and, therefore, he was rendered defaulter in law in payment of rent for more than six months. It was also alleged that the petitioner defendant was a Pune Municipal Corporator and used to threaten the plaintiff and his family members. He made false application to some authorities and thereby harassed the respondent plaintiff. The suit premises was also required bonafide and reasonably and for that purpose the suit came to be filed against the defendant.

The petitioner defendant contested the suit inter-alia denying the entire allegations and sought dismissal of the suit.

The Trial Court Judge, on the basis of pleadings, raised two issues and came to the conclusion that the plaintiff had failed to prove that he requires the suit premises bonafide and, therefore, the plaintiff’s suit for possession was held to be not tenable and, as such, it came to be dismissed.

The appeal was carried to the lower appellate Court. The lower appellate Court, after hearing both parties, raised as many as 6 substantive issues and came to the conclusion that the defendant was rendered defaulter as he had not paid arrears of rent for more than six months. It was further held that the defendant had made permanent structure without consent of the landlord in writing. It was also held that the defendant was guilty of conduct which is a nuisance and annoyance to the plaintiff and his family members. However, it was held that the suit premises was bonafide required by the plaintiff for his occupation and on the issue of greater hardship it was held that it would be the plaintiff who would suffer greater hardship if the decree is refused to be passed than the defendant tenant if the decree is passed and, as such, the order passed by the lower Court was set aside and appeal was allowed and the suit was decreed. Hence the present petition.

4. At the outset, it may be noted that, while hearing the parties and perusing the judgments of both the Courts below, it became obvious that the Trial Court had raised only two issues, namely,

(1) Does the plaintiff prove that he is in bonafide need of the suit premises ? **No.**

(2) Does the plaintiff prove that he is entitled to get the possession of all the three rooms from the dafendant ? **No.**

Whereas, the lower appellate Court, on its own, framed following issues :

(1) Does plaintiff prove that defendant is in arrears of rent and is defaulter, as claimed ? **Yes.**

(2) Does plaintiff prove that defendant has without landlord’s consent given in writing erected a permanent structure ? **Yes.**

(3) Does plaintiff prove that the defendant is guilty of conduct which is a nuisance and annoyance to the plaintiff and his family members ? **Yes.**

(4) Does plaintiff prove that the suit premises are reasonably and bonafide required

by the plaintiff for the occupation by himself and for his family members ? **Yes.**

(5) Who would suffer greater hardship if the decree of eviction is passed rather than refused to pass it ?
The plaintiff, if decree is not passed.

(6) Whether interference is necessary at the hands of this Court to the impugned judgment and decree passed by the Trial Court ? **Yes.**

(7) What order ? **As per final order.**

Therefore, the question arose, as to when the Trial Court, who was the first Court of facts, had not raised the issues as contemplated by Order 14 Rule 1 of the Code of Civil Procedure, whether the appellate Court was justified in proceeding with the appeal without remanding the matter to the Trial Court for proper adjudication on all the issues involved in the dispute between the parties.

5. In this regard, the learned counsel for the respondent came with a submission that the parties with

full knowledge faced the trial and had proceeded with the trial, then mere non-framing of issues would not be fatal and cannot form ground for remand only on that ground. In support of this submission, the learned counsel for the respondent put reliance on various rulings of the Apex Court including the ruling in **Sayeda Akhtar v/s Abdul Ahad, reported in (2003) 7 SCC 52,** wherein it was held that, it is true that the Trial Court had not framed any specific issue but a bare perusal of the judgment passed by the learned Trial Court will clearly demonstrate that the parties were aware thereabout and they not only adduced evidence in that behalf but also advanced their respective submissions in that behalf in relation thereto, then it would not be appropriate to remand the matter. Similar view was taken in the case of **Bhairab Chandra Nandan v/s Ranadhir Chandra Dutta, reported in (1988) 1 SCC 383.** My attention was also drawn to the ruling of the Apex Court in the case of **Kanja Kesaram v/s M.M. Philip, reported in A.I.R. 1964 SC 164,** wherein it was held that the absence of an issue do not lead to any prejudice. In other words, the entire sound of the matter is to the effect that where the parties went to trial fully knowing the rival case and led all the evidence not only in support of their contention to any

refutation of the other side, it cannot be said that the absence of an issue was fatal to the case or that there was a mis-trial which vitiates the proceeding.

6. I must note at this stage that, there cannot be two opinions with regard to the ratio laid down by various rulings of the Supreme Court cited by the learned counsel for the respondent. However, the basic issue involved is whether the Trial Court judgement can be called a judgment in strict sense of the term when the entire body of the judgment show that only two issues were answered in detail on the basis of evidence, namely, the bonafide requirement of the landlord and whether on that ground the plaintiff was entitled to seek possession. In other words, if we perused the judgement of the Trial Court, it is apparent that all other contentions and allegations raised by both parties are summarised in only seven lines as under:

> **"Para 28.** From the evidence on record, it is clear that the plaintiff hasnot proved that Dattraya Keskar is his adopted son beyond reasonable doubt. So the plaintiff is alone in his family and he is in possession of one room which is sufficient for him and he is not

> in bonafide need of the suit premises. The plaintiff cannot seek possession from this Court of two rooms which defendant constructed. This Court has no jurisdiction to give possession of the illegal encroachment made by the defendant. The defendant is paying rent Rs.100/- p.m. For all these reasons he is not in arrears of rent at all. So the plaintiff failed to prove his case and accordingly I give my findings on the points for determination in the negative and pass the following order."

7. According to the learned counsel for the respondent, though the judgment is cryptic, it has touched all the issues involved in the dispute and, therefore, it cannot be said that it has not complied with the provisions of Order 14 Rule 1 of the Code of Civil Procedure. It was also sought to canvass that the judgment is sufficient to show that the spirit behind the provision of Order 14 of Rule 1 is complied with and, therefore, no remand is necessary as the lower appellate Court, which is last Court of fact, was competent to deal with the evidence led by both parties and to raise the issues accordingly.

However, I prefer to disagree with this proposition. Sub-rule (3) of Rule 1 or Order 14 of the C.P.C. stipulates that, each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue. The procedural mandate is quite clear which is also clarified by the Apex Court in the case of **Makhanlal Bangal v/s Manas Bhunia & ors., reported in (2001) 2 SCC 652,** which reads thus -

> "An election petition is like a civil trial. The stage of framing the issues is an important one inasmuch as on that day the scope of the trial is determined by laying the path on which the trial shall proceed excluding diversions and departures therefrom. The date fixed for settlement of issues is, therefore, a date fixed for hearing. The real dispute between the parties is determined, the area of conflict is narrowed and the concave mirror held by the Court reflecting the pleadings of the parties pinpoints into issues, the disputes on which the two sides differ. The correct decision of civil lis largely depends on correct framing of issues, correctly determining the real points in controversy which need to be decided. The scheme of Order 14 C.P.C. dealing with settlement of issues shows that an issue arises when a material proposition of fact or law is affirmed by one party and denied by the other. Each material proposition affirmed by one party and denied by other should form the subject of a distinct issue. An obligation is cast on the court to read the plaint/petition and the written statement/counter, if any, and then determine with the assistance of the counsel for the parties, the material propositions of fact or of law on which the parties are at variance. The issues shall be framed and recorded on which the decision of the case shall depend. The parties and their counsel are bound to assist the court in the process of framing of issues. Duty of the counsel does not belittle the

> primary obligation cast on the Court. It is for the Presiding Judge to exert himself so as to frame sufficiently expressive issues. An omission to frame proper issues may be a ground for remanding the case for retrial subject to prejudice having been shown to have resulted by the omission. The petition may be disposed of at the first hearing if it appears that the parties are not at issue on any material question of law or of fact and the Court may at once pronounce the judgment. If the parties are at issue on some questions of law or of fact, the suit or petition shall be fixed for trial calling upon the parties to adduce evidence on issues of fact. The evidence shall be confined to issues and the pleadings. No evidence on controversies not covered by issues and the pleadings, shall normally be admitted, for each party leads evidence in support of issues the burden of proving which lies on him. The object of an issue is to tie down the evidence and arguments and decision to a particular question so that there may be no doubt on what the dispute is. the judgment, then proceeding issue-wise would be able to tell precisely how the dispute was decided."

Thus, the Apex Court has confirmed that the omission to frame proper issue could be a ground for remanding the case for re-trial subject to prejudiced intention shown to them resulted by the omission. In the present case before us, when the Trial Court raised in fact only one issue in respect of bonafide requirement, the omission to frame issues on five more grounds which were taken by the plaintiff, it is obvious that parties were not put to notice to lead exhaustive evidence with regard to those disputed questions of facts as well as law. No doubt that the suit is dismissed whereas the appeal is allowed and,

therefore, the tenant respondent can conveniently say that he, who is plaintiff, seem prejudiced by the act of the Trial Court. At the same time, it must be noted that the defendant also was put to prejudice because it is needless to mention that it is not obligatory on the parties to lead any evidence regarding which no dispute is raised by way of formal framing of issues.

8. Be that as it may, the fact remains that it is a fit case where a remand would be called for inspite of the fact that there would be some delay in adjudication of the matter.

9. In view of this position, I am inclined to remand the matter with direction to adhere to time bound programme for adjudication.

10. Hence, the Rule is made absolute. The order passed by the Addl. District Judge dated 27.8.2004 is hereby set aside.

The matter is remanded to the Trial Court for adjudication of the suit afresh from the stage of framing of issues. The Trial Court shall give opportunity to both sides to lead proper evidence, if they so wish, on all the issues

raised and then the matter shall be adjudicated according to law within three months from the date of this order.

With this direction, the petition stands disposed of with no order as to costs.

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